

1984 WL 249908 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 19, 1984

*1 Helen T. Zeigler
Special Assistant for Legal Affairs
Office of the Governor
Post Office Box 11450
Columbia, South Carolina 29211

Dear Ms. Zeigler:

You have asked our advice as to whether S.697, R-515 is constitutional. We would advise that the proposed legislation is of doubtful constitutionality.

Of course, if enacted R-515, as any other act, would be presumed constitutional by the courts. Its invalidity would have to appear beyond a reasonable doubt. [Trustees of Wofford College v. City of Spartanburg](#), 201 S.C. 315, 23 S.E.2d 9 (1943).

However, R-515 raises constitutional problems of particular concern. In order to fund court libraries, the governing body of the county is authorized to 'add as costs any or all of the following:

- (1) an amount not to exceed two dollars to the amount collected upon the forfeiture of any appearance bond in a criminal proceeding in any of the magistrates' courts in the county;
- (2) an amount not to exceed two dollars to any fine imposed and collected in any criminal proceeding in any of the magistrates' courts in the county;
- (3) an amount not to exceed five percent to the amount of any criminal fine imposed and collected in the circuit court in that county;'

By allowing each county the discretion to impose additional costs in order to fund the court library, the proposed bill makes it possible to have a system of non-uniformity with respect to such costs in the court system. Such disparate treatment is in apparent violation of Article V of the South Carolina Constitution (1895 as amended) which requires a uniform judicial system. [State ex rel. McLeod v. Crowe](#), 272 S.C. 41, 249 S.E.2d 772 (1978). While the [Crowe](#) case related to fees collected by magistrates, this office has concluded that the requirements of Article V relate also to fines, [Op. Atty. Gen.](#), March 2, 1981, and we see no reason why forfeitures would not be included as well. Just as the General Assembly may not delegate to counties the power to fix the compensation of judicial officers, its delegation to each county the power to impose additional fines, forfeitures and costs would be doubtful. [Kramer v. County Council for Dorchester County](#), 277 S.C. 71, 282 S.E.2d 850 (1981). See also, [Douglas v. McLeod](#), 277 S.C. 76, 282 S.E.2d 604, 605 (1981) [a 'nonunified system' may not be extended].

We simply note one additional problem which appears. R-515 states that the county may establish 'a court library for the use and benefit of the courts in that county.' In other words, from the language of the legislation, it appears such libraries would be solely utilized by the courts themselves. While counties have power with respect to libraries, see § 4-9-35, [Op. Atty. Gen.](#), March 2, 1981, a library solely for use by the courts might fall without the county's power. As the Court concluded in [Douglas v. McLeod](#), *supra*, 'Article VIII effectively withdraws administration of the State judicial system from the field of local concern.' 282 S.E.2d at 606. We simply mention this as an additional problem.

*2 In conclusion, we would advise that R-515 is of doubtful constitutionality. Of course, this office possesses no authority to declare an act of the General Assembly invalid as only a court would have such authority.

If we can be of further assistance, please let us know. With kindest personal regards, I remain
Very truly yours,

Robert D. Cook
Executive Assistant for Opinions

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